

AFFIDAVIT

I, Neil McFater, of the City of Scarborough, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner of S. Warren Hall, the agent for the applicant and as such I am aware of the facts herein deposed.
2. Part of my duties is as managing partner which includes the supervision and maintenance of a diary system for the recording of due dates for responding to Office Actions and Notices of Allowance from both the Canadian and the United States Patent and Trademark Offices.
3. I personally review all of the incoming mail for our office, and all Office Actions, and Notices of Allowances are separated from the regular mail and passed to my secretary, Margaret H. Waldron, who enters the due dates in the diary system. The diary system consists of entries recorded in a computer.
4. After the due dates have been entered, the Office Actions and Notices of Allowances are matched with the applicant's files in our office.
5. Each month copies of the diary listing all outstanding due dates are printed from the computer. These copies are distributed to all secretaries and patent agents in our office to follow up with the applicant on the outstanding due dates so that timely replies can be made to the Office Actions and Notices of Allowances.
6. After the replies are made, the file copies are passed to Margaret Waldron to mark the due dates off the diary by recording the entry in the computer.
7. Attached hereto and marked Exhibit "A" is a photocopy of our computer log showing all the entries that have been made with respect to the above-identified application, which in our computer data base is recorded as 000750-A-0000127. As can be seen from the log, there have been six entries with respect to the various documentation received from the United States Patent Office.

These entries include:

- (1) the initial opening with respect to the filing of the application on January 27, 1997;
- (2) an entry on March 25, 1997 indicating receipt of the filing particulars and the updating of our computer database;
- (3) an entry on June 23, 1997 indicating that the assignment had been recorded;

(4) an entry on December 12, 1997 in response to a Notice from the U.S. Patent Office indicating that the examiner had changed locations and at which time the Examiner's name was entered;

(5) an entry of January 26, 1998 to enter the Notice of Abandonment dated January 21, 1998 from the U.S. Office and inserting a due date of February 21, 1998; and


(6) an internal entry made to establish convention filings.

No other entries are found for this file. Details of the particular transactions are also enclosed as part of Exhibit A.

Attached hereto and marked Exhibit "B" is a copy of our diary system summary report for this file with only the due dates of January 28, 1998 for foreign convention filings and February 21, 1998 for responding to the Notice of Abandonment, covering the period for a response to this letter from the patent office. As can be appreciated from the log and summary, the Official Letter of June 2, 1997 was not entered as no due date for responding thereto has been entered.

Based on a review of the file and a review of our computer diary system, I verily believe that we did not receive an Office Letter of June 2, 1997 with respect to the above-identified application.

SWORN BEFORE ME in the City of)
Toronto, in the Municipality of)
Metropolitan Toronto, this 4th)
day of February, 1998.)


A Notary Public


NEIL MCFATER

STEWART WARREN HALL, Notary Public,
Province of Ontario, limited to the attestation of
instruments and the taking of affidavits for work as
a Patent and Trade Mark Agent,
Expires February 12, 2000.